

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

12 LUIS HERNANDEZ, )  
13 Petitioner, ) No. CV-10-1451-HU  
14 v. )  
15 UNITED STATES OF AMERICA, ) ORDER  
16 Respondent. )  
17 \_\_\_\_\_

Luis A. Hernandez  
17206 S.E. Julie Place  
Portland, Oregon 97236

Petitioner Pro Se

Quinn P. Harrington  
TRIAL ATTORNEY, TAX DIVISION  
United States Department of Justice  
P.O. Box 683  
Ben Franklin Station  
Washington, D.C. 20044-0683

Attorney for Defendant

HAGGERTY, District Judge:

Plaintiff Luis Hernandez seeks to quash a summons issued by the Internal Revenue Service (IRS) to "Wells Fargo Bank National Association." Defendant United States moves to dismiss the

1 petition for lack of subject matter jurisdiction. I grant the  
2 motion.

3 Plaintiff initially filed a miscellaneous civil action in this  
4 Court on August 31, 2010, which was assigned case number 10-CV-  
5 9181, and in which plaintiff sought to quash the same summons as is  
6 at issue in this matter. In the miscellaneous case, the United  
7 States moved to dismiss for failure to effect proper service and  
8 for failure to state a claim. In response to the government's  
9 ineffective service argument, plaintiff filed this civil action on  
10 November 24, 2010, in order to obtain a summons which he could  
11 serve on the government.

12 The right to challenge a third-party IRS summons is created by  
13 statute. Under 26 U.S.C. § 7609(b)(1), a person entitled to notice  
14 of a summons may petition to quash such a summons, however, such a  
15 proceeding must be initiated "not later than the 20th day after the  
16 day such notice is given." 26 U.S.C. § 7609(b)(2)(A).

17 The record shows that plaintiff received notice of the summons  
18 on August 26, 2010. He filed this action on November 24, 2010,  
19 more than twenty days after receiving notice. As such, the United  
20 States has not waived its sovereign immunity to this action and it  
21 must be dismissed for lack of subject matter jurisdiction. E.g.,  
22 Ponsford v. United States, 771 F.2d 1305, 1309 (9th Cir. 1985)  
23 ("[T]he twenty-day limit must be strictly construed because it is  
24 a condition precedent to the waiver of sovereign immunity. . . [A]  
25 district court does not have jurisdiction under § 7609(h)(1) where  
26 the plaintiff has failed to comply with the twenty-day filing  
27 requirement of § 7609(b)(2)(A)."); Strong v. United States, 57 F.  
28 Supp. 2d 908, 915 (N.D. Cal. 1999) (noting that the twenty-day rule

1 is "jurisdictional in nature.").

2 Plaintiff also seeks to consolidate this action with the  
3 miscellaneous action. Although his motion is entitled "Motion to  
4 Correct Filing," it is clear that he seeks to consolidate the  
5 actions. Because, in a separate Opinion and Order, I dismiss the  
6 miscellaneous action on the merits, there is no basis for  
7 consolidation.

8 CONCLUSION

9 The government's motion to dismiss [7] is granted.  
10 Plaintiff's motion to correct filing [4] is denied.

11 IT IS SO ORDERED.

12 Dated this 16th day of December, 2010.

13  
14 /a/ Ancer L. Haggerty

15 \_\_\_\_\_  
16 Ancer Haggerty  
United States District Judge

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28